

In the High Court of Punjab and Haryana at Chandigarh

RSA- 3916 of 2017

Date of Decision: 15.2.2018

Vinod Kumar Amrodia

---Appellant

versus

Rajpal Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Brijender Kaushik, Advocate
for the appellant**

Rekha Mittal, J.

Challenge in the present appeal has been directed against consistent findings recorded by the courts below whereby suit filed by the appellant to challenge sale deed No. 4139 dated 28.2.1989 purported to be executed by his father Gazanand in favour of defendant No. 1/respondent No. 1 was dismissed by the trial court and the judgment and decree passed by the trial court came to be affirmed in appeal by the Additional District Judge, Bhiwani.

Gazanand, father of the appellant died on 15.10.1992. The instant suit was filed by the appellant/plaintiff in February 2005 to challenge sale deed dated 28.2.1989 on the premise that the defendants are very clever persons and they prepared a fabricated sale deed dated 28.2.1989 by way of impersonation, therefore, the aforesaid sale deed is not binding upon rights of the appellant/plaintiff. On 14.11.2004, the

respondents/defendants threatened to dispossess tenant of the plaintiff on the basis of alleged sale deed of which they do not have any right.

The respondents/defendants contested the suit by raising preliminary objections inter alia maintainability of the suit; plaintiff being estopped by his own act and conduct from filing the suit; suit being barred by limitation and bad for non-joinder and mis-joinder of parties. They have controverted the allegations that sale deed dated 28.2.1989 is the result of impersonation or is a forged/fabricated document and liable to be set aside on any ground.

The trial court framed issues, reproduced in para 6 of the judgment and permitted the parties to adduce evidence in support of their respective contentions. After having heard counsel for the parties in the light of materials on record, the trial court non-suited claim of the appellant that sale deed was not executed by Sh. Gazanand or the same is liable to be set aside. As has been noticed hereinbefore, appeal preferred by the appellant did not find favour with the Additional District Judge, Bhiwani wherein findings recorded by the trial court were affirmed without any variance.

Counsel for the appellant has assailed findings of the courts by making three fold submissions. It is argued that in the sale deed, father's name of Gazanand has been mentioned as Ram Sukh Dass Khandwala but in other documents produced on record, father's name of Gazanand does not contain the word 'Dass', sufficient to prove that sale deed was not executed by Gazanand. According to counsel, had the sale deed been read over to Gazanand, he would have immediately pointed out the mistake in his father's name.

The stamp paper for execution of sale deed was purchased by Nirmal Singh and not by Sh. Gazanand. The defendants/respondents did not approach the municipal authorities for change of ownership of the suit property from the name of Gazanand to that of vendee(s) till the year 2004. It is argued that the respondents intentionally did not move an application for bringing necessary change in municipal records till 2004 so that factum of sale deed may not come to notice of the appellant/plaintiff.

So far as purchase of stamp paper by Nirmal is concerned, it has been proved on record that Nirmal Singh is a relative of respondent Nos. 1 and 2, vendees under the sale deed. Ordinarily, the purchaser has to incur expenses of registration of sale deed including expenses of purchase of stamp papers. The stamp papers are purchased in the name of vendor. The mere fact that the stamp papers were purchased by Nirmal, a relative of the vendees is not a circumstance to entertain doubt qua the registered sale deed. Error in father's name of Gazanand as Ram Sukh Dass in place of Ram Sarup is also not material to establish plea of the appellant that the sale deed is the result of impersonation.

Indisputably, Gazanand passed away in the year 1992. The appellant did not approach the municipal authorities for change of entry in the municipal records from the name of Gazanand to his name until 2004. If the appellant himself remained silent for 12 years to get the change incorporated in municipal records, how can he be heard to say that failure of the vendees to move an application for incorporating the necessary change in municipal records till 2004, is a circumstance to record a finding that the sale deed is the result of impersonation/fabrication.

Rajpal Singh and Vijay Kumar, respondent Nos. 1 and 2

appeared in the witness box to counter case of the appellant/plaintiff. Counsel for the appellant has failed to point out if an explanation was sought from them as to why they did not approach the municipal authorities for making a change in the records on the basis of sale deed till 2004.

The three circumstances pointed out by counsel for the appellant/plaintiff are not at all sufficient to intervene in consistent findings recorded by the courts below. As per the settled position in law, the second appeal can not be entertained much less accepted merely because a different view is possible that what has been held by the courts below on the basis of re-appreciation of evidence. Equally settled is that the second appeal is to be admitted for hearing only if it gives rise to a substantial question of law. Counsel for the appellant has failed to raise a substantial question of law that requires to be answered after hearing the contesting party.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

15.2.2018

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No